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Nasseff
100-1361

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:
Namon A. Nassef

Serial No.: 10/603,336

Filed: June 26, 2003

FOR: BAIT CHUMMER

Group Art Unit: 3643

Examiner: Kurt C. Rowan

Confirmation No. 2851

Mail Stop Appeal Brief Patents
P.O. Box 1450
Commissioner for Patents
Alexandria, VA 22313-1450

Via Facsimile To: 571-273-8300

The following items are attached for filing in the above-identified patent application:

1. Amended Appeal Brief.

No fee is believed due. If any fee is due, please charge such fee to Deposit Account No. 19-1453 (Our File No. " **Nassof 100-1361**").

Respectfully submitted,
J. NEVIN SHAFFER, JR., P.A.

Dated: 6 SEP 06

By: _____
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Reg. No. 29,858, J. Nevin Shaffer, Jr. _____

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AMENDED APPEAL BRIEF

This Amended Appeal Brief is filed in response to the Notification of Non-Compliant Appeal Brief dated September 1, 2006. This Reply is filed within one month of the date of the Notification.

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1. REAL PARTY IN INTEREST.

Applicant, Namon A. Nassef, is the real party in interest in this Appeal.

2.RELATED APPEALS AND INTERFERENCES.

There are no related appeals or interferences known to the Applicant which will directly affect or be directly affected by or have a bearing on the Board's decision in the instant Appeal.

3.STATUS OF CLAIMS.

The status of the claims is as follows:

Allowed Claims:	None
Claims Rejected:	1-18
Claims Appealed:	1-18

4. STATUS OF AMENDMENTS.

No amendments have been filed subsequent to the final rejection.

5. SUMMARY OF THE CLAIMED SUBJECT MATTER.

The invention is a chummer for chopping up fish bait (bait fish, synthetic bait, or other types of meat, etc.,) to be deposited into the water for chumming the water in order to attract fish to be caught. The chummer 10 has a housing 12 with a removable top cap 14, a bottom cap, 16 and an upper-end located opening 24 for receiving bait, page 7, lines 2-11, 16-18, figure 1. An inlet port 20 and an outlet port 22 are each located toward the bottom of the housing 12 with the outlet port 22 being below the inlet

port 20, page 7, lines 12-16, figure 1. A reversible motor 26 is attached to the housing 12 and has a shaft 28 axially extending through the housing 12, the shaft 28 received within an appropriate bearing assembly 30 and 32, page 7, line 19-page 8, line 2, figure 1. A pair of spaced apart cutting blades 34 and 36 are attached along a length of the shaft 28, page 8, lines 2-5, figure 1. An impeller blade 38 is attached to the shaft 28 below the lowermost cutting blade 36 and between the inlet port 20 and the outlet port 22, page 8, lines 5-7, figure 1. A mounting bracket 40 is attached to the housing 12 for mounting the housing 12 on an appropriate location of a boat B such as onto the gunwale G, page 8, lines 8-18, figure 1.

The housing 12 is assembled by mounting the desired number and types (coarse chop, fine chop, etc.), of blades 34 and 36 onto the shaft 28 using appropriate spacers 46 as needed and then mounting the housing 12 on the boat B such that both the inlet port 20 and the outlet port 22 of the housing 12 are below the water W line, page 8, lines 19-page 9, line 21. The motor 26 is activated in order to rotate the shaft 28 and the attached cutting blades 34 and 36 and the impeller blade 38, page 9, lines 21-25. Bait is fed into the housing 12 through the opening 24 wherein the bait gravitationally falls onto the cutting blades 34 and 36 which cutting blades 34 and 36 chop the bait up, page 9, lines 25-page 10, line 3. Simultaneously, the impeller blade 38 draws water W into the housing 12 through the inlet port 20 wherein the water W mixes with the bait that has been chopped up by the cutting blades 34 and 36. The water W and chum mixture is dispelled, via the action of the impeller blade 38, through the outlet port 22,

page 10, lines 3-10. If the device 10 becomes clogged, the motor 26 is reversed in order to back flush the device 10, page 10, lines 10-15.

Thus, independent claim 1 for a chummer is fully supported by the specification and drawings as follows:

"a housing having an inlet port, an outlet port, and an opening for receiving bait" [page 7, lines 2-11, 16-18, figure 1.]

"a motor attached to the housing, the motor having a shaft axially extending through the housing" [page 7, line 19-page 8, line 2, figure 1];

"a first cutting blade attached to the shaft" [page 8, lines 2-5, figure 1.] ;

"an impeller blade attached to the shaft and located between the inlet port and the outlet port and below the first cutting blade, wherein rotation of the shaft causes rotation of the impeller blade which causes water to be drawn into the housing through the inlet port and discharged through the outlet port whenever the outlet port is positioned below the water line" [page 8, lines 5-7, figure 1 and page 10, lines 3-10.] ; and

"wherein the housing is placed into the water so that the inlet port and the outlet port are beneath the water line, the bait is placed into the opening , [page 8, lines 19-page 9, line 21] and the motor is activated and rotates the shaft such that the bait falls through the housing and is cut up by the first cutting blade [page 9, lines 25-page 10, line 3.] and the impeller blade draws water through the inlet port into the housing wherein the water is mixed with the cut up bait and the mixed water and cut up bait are expelled through the outlet port"[page 10, lines 3-10.].

Likewise, independent claim 9 for a churnmer is fully supported by the specification and drawings as follows:

"a housing having a top cap, a bottom cap, an inlet port, an outlet port, and an opening for receiving bait [page 7, lines 2-18, figure 1.];

"a motor attached to the top cap of the housing, the motor having a shaft axially extending through the housing" [page 7, line 19-page 8, line 2, figure 1];

"a first cutting blade attached to the shaft"[page 8, lines 2-5, figure 1.];

"an impeller blade attached to the shaft and located between the inlet port and the outlet port and below the first cutting blade, wherein rotation of the shaft causes rotation of the impeller blade which causes water to be drawn into the housing through the inlet port and discharged through the outlet port whenever the outlet port is positioned below the water line" [page 8, lines 5-7, figure 1 and page 10, lines 3-10.]; and

"wherein the housing is placed into the water so that the inlet port and the outlet port are beneath the water line, the bait is placed into the opening , [page 8, lines 19-page 9, line 21] and the motor is activated and rotates the shaft such that the bait falls through the housing and is cut up by the first cutting blade [page 9, lines 25-page 10, line 3.] and the impeller blade draws water through the inlet port into the housing wherein the water is mixed with the cut up bait and the mixed water and cut up bait are expelled through the outlet port"[page 10, lines 3-10.].

6. GROUNDS FOR REJECTION TO BE REVIEWED ON APPEAL.

The grounds for rejection to reviewed on appeal are:

a. whether claims 1-3, 7-11, and 15-18 are unpatentable under 35 U.S.C. 103(a) over Spinelli (6,581,322) in view of Wentzell (5,720,124); and

b. whether claims 4-6, and 12-14 are unpatentable under 35 U.S.C. 103(a) over Spinelli (6,581,322) in view of Wentzell (5,720,124) in further view of Stanish et al., (4,686,242).

7. ARGUMENT

A. AS TO CLAIMS 1-3, 7-11, AND 15-18.

Applicant invented his device in order to provide a chummer that automatically chops and expels bait with minimal interaction by the user and that can be easily cleaned or unclogged by back flushing the device as needed. The prior art, neither singularly nor in combination, shows such a device as claimed by Applicant. **Applicant's argument is directed specifically to claims 1 and 9, the two independent claims from which all other claims depend.**

The Spinelli invention is an automatic chummer that has a scything cutting means 35 which cuts the chum bait and also drives the chum bait against filtering means 33 for grinding the chum bait and against shearing cutting means or horizontal blade 36 for cutting residual chum bait retained by the filtering means 33, Abstract. Filtering means 33 is a flat disk member that has a series of openings 33b located

thereon, column 3, lines 11-17, figures 2, 4a-4c, 6b. A counter-blade 34 is located below filtering means 33, column 3, lines 11-17, figure 6c. The various blades 33, 34, 35, and 36 are mounted on a rotating shaft driven by a motor, which may be a low power motor, for example a variable speed 5 watt motor, column 2, lines 37-45, figures 2, 6b, 6c. The scything cutting blade 35 and the horizontal blade 36 are a double blade helix and are formed integrally by stamping a flat configuration, column 3, lines 17-32, figure 3a, with the horizontal blade 36 being disposed in a horizontal plane and the scything cutting blade 35 being inclined with respect to the horizontal blade 36 about fifteen degrees above the horizontal blade 36, column 3, lines 11-40. The Spinelli device is designed to be located above the water line, column 2, lines 21-23.

The Wentzell et al. device (hereafter Wentzell) is a manual chummer wherein blades are mounted on a shaft whereby shaft rotation is achieved by manually plunging and pulling a handle attached to the shaft. The device is immersed in the water during bait grinding operation, Abstract, figures 1-4.

The Examiner argues that it is obvious to modify the Spinelli invention with the teachings of the Wentzell patent in order to arrive at Applicant's independent claims 1 and 9. The Examiner states that the Spinelli device discloses a housing with an inlet port 33b and an outlet port 33b, an opening 12 for receiving bait, a top cap 42, 43 and bottom caps 60, a motor 40 that drives a shaft 32, a cutting blade 35 attached to the shaft and an impeller blade 36 attached to the shaft. The Examiner modifies the Spinelli device with the Wentzell disclosure by placing the inlet and outlet ports below the water line as taught by the Wentzell device's below water perforations. The Examiner further

modifies the Spinelli device by moving the impeller blade 36 between the inlet port and the outlet port arguing that it is a rearrangement of parts and is, therefore, an obvious variation. Respectfully, this argument fails for many reasons.

First, and assuming arguendo, that the modification of the Spinelli device with the teachings of the Wentzell patent arrives at Applicant's claimed invention, which will be shown infra that such is not the case, there is no suggestion or motivation for combining the teachings of the Spinelli invention with the teachings of the Wentzell patent. The Examiner argues that the motivation for so combining the teachings is to provide a more homogenous mix of the chum since the addition of water will dilute the chum and therefore make the chum more homogenous and that the motivation is found in the knowledge generally available to one of ordinary skill in the art. In the first place, mixing chum with water does not result in a more homogenous chum, but merely in chum with more water or a more diluted chum. For example, if a bait sardine is dropped into the chummer and is ground into three pieces, adding water to this chum will not make the chum any more homogenous. You still only have three pieces now more diluted for the volume of space which they occupy. The argument is the same if the chum is ground to a finer granularity. Thus, greater homogeneity is achieved by making a finer grind of the chum bait not by adding water.

Nonetheless, even if it is assumed that mixing the chum with water does result in a more homogenous chum; How is this important in any fashion? Fishermen are concerned with two aspects of chum: the type of bait being chummed and the size of the chum. Each of these are important for the type of fish for which the fishermen are

fishing. Homogeneity of the chum achieves no useful results. The fish are not particularly picky eaters and they prefer chum that is of a size and type that they can and do eat. There is nothing to suggest that fish care whether the chum is homogenous or not.

Additionally, if mixing the chum with water at the lower level of the housing does in fact make the chum more homogenous, then dropping the chum directly into the water being fished will even further increase the homogeneity of the chum. If dropping the chum into the Gulf of Mexico, for example, creates a highly homogenous chum, just what is the purpose of creating a mid-level homogenous chum within the body of the chummer, an area where the fish being targeted by the fishermen will not be found. In fact, fish approach the chum after is has been expelled from the chummer. Accordingly, the Examiner is attempting to arrive at a solution for which no problem exists and then only creates a more diluted chum not a more homogenous chum as suggested. Thus, there is no objective reason to combine the teachings of the cited references, which is required. Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). Therefore, Applicant respectfully submits that there is no motivation to combine the Spinelli device with the teachings of the Wentzell patent and Applicant's device is non-obvious with respect to the prior art.

Further, even if motivation does exist for combining the Spinelli device with the teachings of the Wentzell patent, the proposed combination fails to disclose or suggest Applicant's claimed invention. Applicant's invention claims an impeller blade located between the inlet prot and the outlet port and below the first cutting blade. The Spinelli

device lacks an impeller blade. The Examiner cites blade 36 as being the impeller blade, but this is not so. Spinelli's blade 36 is designed to shear the chum bait that is cut by blade 35 and that is held back by the openings 33b of filtering blade 33. Blade 36 is disposed in a horizontal plane and is, in fact, referred to as " horizontal blade" throughout the patent, column 4, lines 45, 55, 62-63, column 5, lines 34, 38, claim 5. An impeller blade drives fluid under pressure. This is not the design or function of horizontal blade 36 as it is designed, again, to be a shear blade that shears chum that gets caught in the openings 33b of filtering means 33. The Examiner argues that since the horizontal blade 36 rotates, and when modified by the teachings of the Wentzell device, within water it thus creates turbulence between the inlet port and the outlet port.

Applicant respectfully submits that turbulence does not equal fluid under pressure as with an impeller. "Claims must be given their broadest reasonable interpretation consistent with the specification." MPEP 2111. And claims must be given their "plain meaning" unless they are defined in the specification. MPEP 2111.01. Applicant has claimed an impeller blade, the plain meaning of an impeller blade, a well defined term in the art, is a blade that moves fluid under pressure. The fact that horizontal blade 36 creates turbulence with the water does not transform blade 36 into an impeller blade.

Further, the Examiner has asserted in a prior answer to the original appeal that blade 33 and blade 36 of Spinelli will drive a fluid since both have thickness. In anticipation of this assertion, Applicant respectfully submits that just because blade 33 and blade 36 have thickness does not mean that they can or will drive fluid. In order for

a blade to be an impeller blade, a blade must have pitch or angle. Neither blade 33 nor blade 36 have any pitch or angle and will not drive a fluid.

Applicant admits that blade 35 of Spinelli does have pitch and could drive a fluid but this brings up the problem of trying to locate this blade 35 within the flat blade 33 of Spinelli as the Examiner's rejection requires which would be impossible in Spinelli's invention as disclosed and described, as Applicant more fully explains hereafter. Accordingly, Applicant respectfully submits that even modifying the Spinelli device with the teachings of the Wentzell patent fails to disclose or suggest Applicant's invention as claimed.

The Examiner has defined openings 33b as the inlet port as well as the outlet port. How is the "impeller blade" 36 going to move water into one of these openings and out the other? Certainly, blade 36 can not. Furthermore, even if the modification is made as stated by the Examiner, then the horizontal blade 36, as the "impeller blade", is below the water as is the filtering means 33 and the counter-blade 34 and cutting blade 35, unless the device is precisely positioned and the water level does not change either by boat movement or water action. Automatic chummers such as that disclosed by Spinelli and by Applicant rely on gravity to feed the bait through the cutting blades. If the cutting blades are underwater, as would be the case if the modification proposed by the Examiner is made, then at the very least a substantial portion of the gravitational forces will be reduced by the buoyancy effects of the water on the bait. Many types of chum will in fact float instead of being pressed through the cutting blades, thus rendering the modified device inoperable. Applicant respectfully submits that modifying

the Spinelli device with the teachings of the Wentzell patent will render the Spinelli device inoperative and is therefore not permitted. MPEP 2143.01.

Lastly, the Examiner argues that placing the impeller blade between the inlet port and the outlet port is an obvious variation since rearrangement of the location of parts has been held to be obvious. The Examiner provides that openings 33b on filtering means 33 are both the inlet port and the outlet port. Exactly how an impeller blade can be located between "two" openings where only one actually exists on the same flat disk-shaped member 33 is not understood and is not possible within the Spinelli chummer.

Accordingly, Applicant respectfully requests that the determination by the Examiner that claims 1-18 are not patentable for the reasons given by the Examiner be reversed in total, the claims allowed and the case passed to issuance.

B. AS TO CLAIMS 4-6 AND 12-14.

Applicant respectfully submits that dependent claims 4-6 and claims 12-14 which depend from independent claim 1 and 9 respectively are allowable for the reason that they depend from allowable independent claims as set forth fully in paragraph 7 A directly above.

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8. CLAIMS APPENDIX.

Claim 1.

A chummer comprising:

a housing having an inlet port, an outlet port, and an opening for receiving bait;

a motor attached to the housing, the motor having a shaft axially extending through the housing;

a first cutting blade attached to the shaft;

an impeller blade attached to the shaft and located between the inlet port and the outlet port and below the first cutting blade, wherein rotation of the shaft causes rotation of the impeller blade which causes water to be drawn into the housing through the inlet port and discharged through the outlet port whenever the outlet port is positioned below the water line; and

wherein the housing is placed into the water so that the inlet port and the outlet port are beneath the water line, the bait is placed into the opening , and the motor is activated and rotates the shaft such that the bait falls through the housing and is cut up by the first cutting blade and the impeller blade draws water through the inlet port into the housing wherein the water is mixed with the cut up bait and the mixed water and cut up bait are expelled through the outlet port.

Claim 2.

The chummer as in claim 1 wherein the motor is an electric motor.

Claim 3.

The chummer as in claim 1 wherein the motor is reversible such that the rotation of the shaft is reversible.

Claim 4.

The chummer as in claim 1 further comprising a second blade attached to the shaft between the first cutting blade and the impeller blade.

Claim 5.

The chummer as in claim 4 wherein the distance between the first cutting blade and the second cutting blade is changeable.

Claim 6.

The chummer as in claim 4 further comprising a spacer disposed between the first cutting blade and the second cutting blade.

Claim 7.

The chummer as in claim 1 further comprising a mounting bracket attached to the housing.

Claim 8.

The chummer as in claim 7 wherein the mounting bracket is pivotally attached to the housing.

Claim 9.

A chummer comprising:

a housing having a top cap, a bottom cap, an inlet port, an outlet port, and an opening for receiving bait;

a motor attached to the top cap of the housing, the motor having a shaft axially extending through the housing;

a first cutting blade attached to the shaft;

an impeller blade attached to the shaft and located between the inlet port and the outlet port and below the first cutting blade, wherein rotation of the shaft causes rotation of the impeller blade which causes water to be drawn into the housing through the inlet port and discharged through the outlet port whenever the outlet port is positioned below the water line; and

wherein the housing is placed into the water so that the inlet port and the outlet port are beneath the water line, the bait is placed into the opening , and the motor is activated and rotates the shaft such that the bait falls through the housing and is cut up by the first cutting blade and the impeller blade draws water through the inlet port into the housing wherein the water is mixed with the cut up bait and the mixed water and cut up bait are expelled through the outlet port.

Claim 10.

The chummer as in claim 9 wherein the motor is an electric motor.

Claim 11.

The chummer as in claim 9 wherein the motor is reversible such that the rotation of the shaft is reversible.

Claim 12.

The chummer as in claim 9 further comprising a second blade attached to the shaft between the first cutting blade and the impeller blade.

Claim 13.

The chummer as in claim 12 wherein the distance between the first cutting blade and the second cutting blade is changeable.

Claim 14.

The chummer as in claim 12 further comprising a spacer disposed between the first cutting blade and the second cutting blade.

Claim 15.

The chummer as in claim 9 further comprising a mounting bracket attached to the housing.

Claim 16.

The chummer as in claim 15 wherein the mounting bracket is pivotally attached to the housing.

Claim 17.

The chummer as in claim 9 wherein an end of the shaft is received within a bearing assembly attached to the bottom cap.

Claim 18.

The chummer as in claim 9 wherein the bottom cap is removably attached to the housing.

9. EVIDENCE APPENDIX.

None.

10. RELATED PROCEEDINGS APPENDIX.

None.

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CONCLUSION

For all of the reasons submitted herein, the Applicant submits that the cited references do not in any way teach or suggest the invention set out in Claims 1-18 and thus that Claims 1-18 are not in any way anticipated or obvious in view of these references. Thus, Applicant respectfully requests that the determination by the Examiner that claims 1-18 are not patentable for the reasons given by the Examiner be reversed and the claims allowed.

Respectfully submitted,

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Date: 6 Sep 06

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